

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 43

Citations Affected: IC 4-21.5-3.5-8; IC 5-24-1-4; IC 8-1.5-5-7; IC 13-11-2-0.7; IC 13-13; IC 13-14; IC 13-18; IC 13-19-4; IC 13-20; IC 13-21-3-12; IC 13-23-7-1; IC 13-30; IC 34-24-1-1; IC 36-9-23.

Synopsis: State administration and environmental law. Proposed conference committee report for ESB 43. Requires, with respect to environmental rules subject to automatic expiration, the department of environmental management (IDEM) or the appropriate rulemaking board to publish a notice identifying which of the rules will be readopted. Requires IDEM or the board, on request of a person, to consider readoption of an environmental rule that IDEM or the board proposes to allow to expire. Establishes procedures to prevent a county department of storm water management and a municipal works board from imposing fees in the same area for storm water management. Provides that a solid waste management district has the power to pay a fee to a county that: (1) was part of a joint district; (2) has withdrawn from the joint district as of January 1, 2008; and (3) has established its own district in which a final disposal facility is located. Provides that a person must be qualified as a mediator under Indiana Supreme Court Rules to serve as a mediator in an administrative proceeding unless the parties and the administrative law judge agree to a mediator who is not qualified as such. Eliminates the requirement for IDEM to include a laboratory division. For a landfill that is not exempt from demonstration of need requirements in a county that does not zone, provides: (1) that an applicant that has an application pending on April 1, 2008, for an original permit for construction or operation and that meets certain other conditions must submit a new permit application and meet the requirements of all applicable environmental laws existing at the time the new permit is sought, that the applicant is not required to pay a new application fee, and that the county executive must approve the proposed facility location; and (2) that the county executive must approve the proposed facility location for an application for an original construction permit submitted to the department after March 31, 2008. Provides in a county that zones that a person holding a permit for construction of a landfill that has not accepted waste and for which zoning was approved before April 1, 1985, may begin or complete construction only if the zoning authority reviews and approves the appropriateness and legality of the zoning under current law. Eliminates the requirement for certain water and wastewater operators to display certificates. Provides that a wastewater management vehicle must have an identification number issued by

IDEM instead of a license. Provides that IDEM may issue a wastewater management permit that incorporates issuance of a wastewater management vehicle identification number and approval of a land application site. Eliminates the requirement for an applicant for certain waste permits to include the applicant's Social Security number in the application disclosure statement. Allows IDEM to require additional information in the application. With respect to the mercury switch removal program: (1) states the purposes of the program; (2) requires IDEM to pay recyclers for removed anti-lock braking system G-force sensors and other components containing more than 10 milligrams of mercury; and (3) provides that the mercury switch removal requirement does not apply if the removal would require dismantling of the vehicle. Allows IDEM to use money in the underground petroleum storage tank excess liability trust fund for the inspection of underground storage tanks, and limits the combined amount of payments from the fund in a year for tank inspection and administration of claims against the fund to 10% of the fund income in the immediately preceding year. Establishes standards for electronic submission of information to IDEM. Repeals certain environmental crimes statutes, and substitutes a statute that: (1) designates environmental violations as crimes; (2) establishes more severe penalties if the violation results in substantial harm to the environment or loss of human life; (3) establishes factors to be considered in sentencing; and (4) establishes maximum and minimum fines. Reduces from a Class D felony to a Class B misdemeanor the penalty for offenses concerning: (1) destruction, alteration, concealment, or false certification of a record; (2) rendering inaccurate or inoperative a recording device or a monitoring device; and (3) falsifying testing or monitoring data. Provides that criminal penalties apply regardless of whether a person uses electronic submissions or paper documents to accomplish the criminal actions. Extends the environmental crimes task force for one year. **(This conference committee report adds the provisions concerning: (1) qualification to serve as a mediator; (2) elimination of the IDEM laboratory division; (3) landfill permits and zoning approval; (4) elimination of the requirement for display of water and wastewater operator certificates; (5) wastewater management vehicle identification numbers and permits; (6) elimination of the requirement for listing of a waste permit applicant's Social Security number and allowing IDEM to require additional information in the application; (7) the mercury switch removal program; (8) the underground petroleum storage tank excess liability trust fund; (9) electronic submission of information to IDEM; and (10) environmental crimes. This conference committee report deletes: (1) an exemption from property taxation for certain wetlands; and (2) a requirement for the regulatory flexibility committee to study the tree trimming practices of utilities.)**

Effective: Upon passage; July 1, 2008.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 43 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning state
- 3 administration and environmental law.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 4-21.5-3.5-8 IS AMENDED TO READ AS
- 6 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. **(a) Except as**
- 7 **provided in subsection (b),** a person who applies to be a mediator
- 8 under this chapter must have:
- 9 (1) ~~completed at least forty (40) hours of mediation training in~~
- 10 ~~courses certified as appropriate for mediation training by the~~
- 11 ~~Indiana commission for continuing legal education;~~
- 12 (2) received a minimum of five (5) hours of mediation training
- 13 during the two (2) year period before application; and
- 14 (3) received a minimum of five (5) hours of mediation training
- 15 during the two (2) year period before reapplication if
- 16 reapplication is required by the agency involved.
- 17 **be qualified as a mediator under Rule 2.5 of the Indiana Supreme**
- 18 **Court Rules for Alternative Dispute Resolution.**
- 19 **(b) Subject to approval of the administrative law judge, the**
- 20 **parties may agree on any person to serve as a mediator.**
- 21 SECTION 2. IC 5-24-1-4 IS ADDED TO THE INDIANA CODE
- 22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

1, 2008]: **Sec. 4. IC 13-14-13 and IC 13-30-10-1 apply to the use of an electronic submission for any of the following:**

(1) **Satisfaction of a state or federal requirement for reporting to the department of environmental management.**

(2) **Satisfaction of the requirements for an application to the department of environmental management.**

(3) **Submission to the department of environmental management of any other substitute for a paper document.**

SECTION 3. IC 8-1.5-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) The acquisition, construction, installation, operation, and maintenance of facilities and land for storm water systems may be financed through:

(1) proceeds of special taxing district bonds of the storm water district;

(2) the assumption of liability incurred to construct the storm water system being acquired;

(3) service rates;

(4) revenue bonds; or

(5) any other available funds.

(b) **Except as provided in IC 36-9-23-37**, the board, after holding a public hearing with notice given under IC 5-3-1 and obtaining the approval of the fiscal body of the unit served by the department, may assess and collect user fees from all of the property of the storm water district for the operation and maintenance of the storm water system. The amount of the user fees must be the minimum amount necessary for the operation and maintenance of the storm water system. The assessment and collection of user fees under this subsection by the board of a county must also be approved by the county executive.

(c) The collection of the fees authorized by this section may be effectuated through a periodic billing system or through a charge appearing on the semiannual property tax statement of the affected property owner.

(d) The board shall use one (1) or more of the following factors to establish the fees authorized by this section:

(1) A flat charge for each lot, parcel of property, or building.

(2) The amount of impervious surface on the property.

(3) The number and size of storm water outlets on the property.

(4) The amount, strength, or character of storm water discharged.

(5) The existence of improvements on the property that address storm water quality and quantity issues.

(6) The degree to which storm water discharged from the property affects water quality in the storm water district.

(7) Any other factors the board considers necessary.

(e) The board may exercise reasonable discretion in adopting different schedules of fees or making classifications in schedules of fees based on:

(1) variations in the costs, including capital expenditures, of furnishing services to various classes of users or to various locations;

(2) variations in the number of users in various locations; and

(3) whether the property is used primarily for residential,

commercial, or agricultural purposes.

SECTION 4. IC 13-11-2-0.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 0.7. "ABS sensor", for purposes of IC 13-20-17.7, refers to an anti-lock braking system G-force sensor.**

SECTION 5. IC 13-13-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. The department must include the following divisions:

- (1) An air pollution control division.
- (2) A water pollution control division.
- (3) A solid waste management division.
- ~~(4) A laboratory division.~~
- ~~(5)~~ (4) An administrative services division.
- ~~(6)~~ (5) A division of pollution prevention.

SECTION 6. IC 13-13-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. The:

- (1) position of commissioner;
- (2) highest position in each of the offices, except for the offices identified in:
 - (A) IC 13-13-3-1(1); and
 - (B) IC 13-13-3-1(3); and
- (3) highest position in each of the divisions; ~~except for the division identified in IC 13-13-3-2(4);~~

are subject to IC 4-15-1.8.

SECTION 7. IC 13-14-9.5-4, AS AMENDED BY P.L.123-2006, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Except as provided in subsection (b), **with respect to the rules subject to expiration under this chapter,** the department or a board that has rulemaking authority under this title:

- (1) may readopt ~~at one (1) or more of the rules subject to expiration under this chapter~~ under one (1) rule that lists all rules that are readopted by their titles and subtitles only; **and**
- (2) **shall publish a notice in the Indiana Register identifying:**
 - (A) **the rules, if any, that will be readopted; and**
 - (B) **the rules, if any, that will not be readopted.**

A rule that has expired but is readopted under this subsection may not be removed from the Indiana Administrative Code.

(b) If a person submits to the department or a board that has rulemaking authority under this title a written request ~~and stating~~ a basis for the request during the first comment period that a particular rule be readopted separately from the readoption rule described in subsection (a), the department or board must:

- (1) ~~readopt~~ **consider readoption of** that rule separately from the readoption rule described in subsection (a); and
- (2) follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule.

(c) If the department or board does not receive a written request under subsection (b) regarding a rule within the first comment period, the agency may:

- (1) submit the **readoption** rule for filing with the publisher under IC 4-22-2-35 and publish notice in the Indiana Register that the

agency has readopted the rule; or

(2) for one (1) or more of the rules proposed to be readopted as part of the readoption rule described in subsection (a), elect the procedure for readoption under IC 13-14-9.

(d) If a person submits to the department or a board that has rulemaking authority under this title a written request stating a basis for the request during the first comment period that a particular rule that the department or board does not intend to readopt as part of the readoption rule described in subsection (a) be readopted, the department or board must:

(1) consider readoption of that rule separately from the readoption rule described in subsection (a); and

(2) follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule.

SECTION 8. IC 13-14-13 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 13. Electronic Applications and Reports

Sec. 1. This chapter applies to the use of an electronic submission for any of the following:

(1) Satisfaction of a state or federal requirement for reporting to the department.

(2) Satisfaction of the requirements for an application to the department.

(3) Submission to the department of any other substitute for a paper document.

Sec. 2. The department may accept the electronic submission of information only if the submission meets the following:

(1) Standards established under IC 5-24 and corresponding rules.

(2) Requirements of cross-media electronic reporting under 40 CFR 3.

(3) Procedures established by the department to accept electronic information.

Sec. 3. The department may not require a person to make electronic submissions under this chapter.

Sec. 4. (a) The department may adopt procedures that are consistent with federal law for compliance with this chapter to allow an applicant to submit an electronic document bearing the valid electronic signature of a signatory if that signatory would otherwise be required to sign the paper document for which the electronic document substitutes.

(b) The procedures adopted under subsection (a) may provide for electronic signature standards that are:

(1) acceptable to the state board of accounts under IC 5-24; and

(2) consistent with 40 CFR 3.

Sec. 5. Information submitted in an acceptable electronic document under a procedure adopted under section 4 of this chapter must have a signature uniquely assigned. The receiving system for the document must be able to attribute the signature to

1 a specific individual. If an electronic document is submitted under
 2 an assigned signature, the signatory may not repudiate
 3 responsibility for the signature.

4 **Sec. 6. A person is subject to applicable state or federal civil,**
 5 **criminal, or other penalties and remedies for failure to comply**
 6 **with a reporting requirement if the person submits an electronic**
 7 **document that:**

8 (1) is in place of a paper document under this chapter; and

9 (2) fails to comply with the following:

10 (A) Standards established under IC 5-24 and supporting
 11 rules.

12 (B) Requirements of cross-media electronic reporting
 13 under 40 CFR 3.

14 (C) Procedures established by the department to accept
 15 electronic information.

16 **Sec. 7. A person submitting information using an assigned**
 17 **signature is liable under IC 13-30-10 for the information provided**
 18 **and subject to penalties under that chapter, regardless of whether**
 19 **the information submitted is in electronic form or other form.**

20 SECTION 9. IC 13-18-11-4 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. ~~(a)~~ The
 22 commissioner shall issue certificates attesting to the competency of
 23 operators. A certificate must indicate the classification of works, plant,
 24 or system that the operator is qualified to supervise.

25 ~~(b) Each operator shall prominently display the operator's certificate~~
 26 ~~in the office of the operator.~~

27 SECTION 10. IC 13-18-12-2 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) A person may not
 29 transport, treat, store, or dispose of wastewater in violation of this
 30 chapter.

31 (b) A person may not engage in:

32 (1) the cleaning of sewage disposal systems; or

33 (2) the transportation, treatment, storage, or disposal of
 34 wastewater;

35 without a wastewater management permit unless the person is
 36 exempted under section 7 of this chapter.

37 (c) A person may not operate a vehicle for the transportation of
 38 wastewater without a wastewater management vehicle ~~license~~
 39 **identification number issued** under this chapter unless the person is
 40 exempted under section 4(a)(2) of this chapter.

41 (d) A person may not dispose of wastewater by land application
 42 without first obtaining approval of the land application site under this
 43 chapter.

44 **(e) The department may issue a wastewater management permit**
 45 **that incorporates issuance of a wastewater management vehicle**
 46 **identification number and approval of a land application site.**

47 ~~(e)(f)~~ The department may issue new and renewal permits, ~~licenses,~~
 48 **identification numbers,** and approvals under this chapter for a period
 49 the department determines appropriate. However, the period may not
 50 exceed three (3) years.

51 SECTION 11. IC 13-18-12-4 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) The board shall, in accordance with IC 13-14-8, adopt rules to establish the following:

(1) Standards for the following:

(A) The issuance of wastewater management permits under section 3 of this chapter.

(B) Cleaning of sewage disposal systems.

(C) Transportation, storage, and treatment of wastewater, and disposal of wastewater, including land application.

(2) ~~Licensure~~ **Issuance of identification numbers** for all vehicles used in wastewater management services. However, the board may exempt by rule vehicles licensed on September 1, 1983, under the industrial waste haulers rule 320 IAC 5-10 as the rule existed on September 1, 1983.

(3) Procedures and standards for approval of sites for land application of wastewater.

(b) The board may designate a county or city health agency as the board's agent to approve land application sites in accordance with rules adopted under this section.

SECTION 12. IC 13-18-12-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) Subject to subsections (b) and (c), the board may adopt a fee schedule for the issuance of:

(1) wastewater management permits;

(2) wastewater management vehicle ~~licenses~~, **identification numbers**; and

(3) land application site approvals;

under this chapter.

(b) A permit fee may not exceed one hundred dollars (\$100) per year.

(c) A vehicle ~~license~~ **identification number** or land application approval fee may not exceed thirty dollars (\$30) per year per vehicle or site.

(d) Whenever the board designates a county or city health agency as the board's agent to approve land application sites under this chapter, the county or city health agency shall collect and retain the land application approval fee.

SECTION 13. IC 13-18-12-6.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6.5. In addition to any other authority in this title, the commissioner or a designated staff member may, under IC 4-21.5, revoke or modify a permit, ~~license~~, **a vehicle identification number**, or **an** approval issued under this chapter for any of the following reasons:

(1) Violation of a requirement of this chapter, rules adopted under this chapter, a permit, ~~a license~~, **an identification number**, or an approval.

(2) Failure to disclose all relevant facts.

(3) A misrepresentation made in obtaining the permit, ~~license~~, **identification number**, or approval.

(4) Failing to meet the qualifications for a permit, ~~a license~~, **an identification number**, or an approval or failing to comply with

the requirements of the water pollution control laws or rules adopted by the board.

(5) Changes in circumstances relating to the permit, ~~license~~, **identification number**, or approval that require either a temporary or permanent reduction in the discharge of contaminants.

SECTION 14. IC 13-18-12-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. This chapter does not require a person to obtain a permit or vehicle ~~license~~ **identification number** under this chapter if the person is:

(1) engaged in:

(A) servicing or maintaining publicly owned wastewater treatment facilities; or

(B) transportation of wastewater from a publicly owned wastewater treatment facility;

as long as the wastewater at that facility has been fully treated and is stabilized;

(2) transporting wastewater from the point of its removal to another location on the same site or tract owned by the same person, although disposal of the wastewater must be done in accordance with this chapter; or

(3) a homeowner who cleans and services the sewage disposal system serving only the homeowner's residence, although transportation and disposal of wastewater must be done in compliance with this chapter.

SECTION 15. IC 13-19-4-2, AS AMENDED BY P.L.154-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. Before an application for the issuance, transfer, or major modification of a permit for a solid waste processing facility, solid waste disposal facility, or hazardous waste facility may be granted, the applicant and each person who is a responsible party with respect to the applicant must submit to the department:

(1) a disclosure statement that:

(A) meets the requirements set forth in section 3(a) of this chapter; and

(B) is executed under section 3(b) of this chapter; or

(2) all of the following information:

(A) The information concerning legal proceedings that:

(i) is required under Section 13 or 15(d) of the federal Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); and

(ii) the applicant or responsible party has reported under form 10-K.

(B) A description of all judgments that:

(i) have been entered against the applicant or responsible party in a proceeding described in section 3(a)(3) of this chapter; and

(ii) have imposed upon the applicant or responsible party a fine or penalty described in section 3(a)(3)(A) of this chapter.

(C) A description of all judgments of conviction entered

1 against the applicant or responsible party within five (5) years
 2 before the date of submission of the application for the
 3 violation of any state or federal environmental protection law.

4 **(D) Any other related information to support the**
 5 **application requested by the department concerning either**
 6 **of the following:**

7 **(i) The applicant.**

8 **(ii) The responsible party.**

9 SECTION 16. IC 13-19-4-3 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) In a disclosure
 11 statement required by section 2 of this chapter, the applicant or
 12 responsible party shall set forth the following information:

13 (1) The name **and** business address **and** ~~Social Security number~~
 14 of the applicant or responsible party.

15 (2) A description of the applicant's or responsible party's
 16 experience in managing the type of waste that will be managed
 17 under the permit.

18 (3) A description of all civil and administrative complaints
 19 against the applicant or responsible party for the violation of any
 20 state or federal environmental protection law that:

21 (A) have resulted in a fine or penalty of more than ten
 22 thousand dollars (\$10,000) within five (5) years before the
 23 date of the submission of the application; or

24 (B) allege an act or omission that:

25 (i) constitutes a material violation of the state or federal
 26 environmental protection law; and

27 (ii) presented a substantial endangerment to the public
 28 health or the environment.

29 (4) A description of all pending criminal complaints alleging the
 30 violation of any state or federal environmental protection law that
 31 have been filed against the applicant or responsible party within
 32 five (5) years before the date of submission of the application.

33 (5) A description of all judgments of criminal conviction entered
 34 against the applicant or responsible party within five (5) years
 35 before the date of submission of the application for the violation
 36 of any state or federal environmental protection law.

37 (6) A description of all judgments of criminal conviction of a
 38 felony constituting a crime of moral turpitude under the laws of
 39 any state or the United States that are entered against the
 40 applicant or responsible party within five (5) years before the date
 41 of submission of the application.

42 (7) The location of all facilities at which the applicant or
 43 responsible party manages the type of waste that would be
 44 managed under the permit to which the application refers.

45 (b) A disclosure statement submitted under section 2(1) of this
 46 chapter:

47 (1) must be executed under oath or affirmation; and

48 (2) is subject to the penalty for perjury under IC 35-44-2-1.

49 SECTION 17. IC 13-20-2-10 IS ADDED TO THE INDIANA
 50 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 51 [EFFECTIVE UPON PASSAGE]: **Sec. 10. (a) This section applies**

only:

- (1) in a county that does not zone under IC 36-7-4; and
- (2) to a facility:
 - (A) that is proposed to be constructed after April 1, 2008;
 - (B) that is not exempt under IC 13-20-1-1 from the demonstration of needs requirements of IC 13-20-1; and
 - (C) for which a permit for construction or operation is required under this article.

(b) If:

- (1) a person submitted to the department before April 1, 2008:
 - (A) an application under this chapter for an original construction permit for a facility;
 - (B) a modification of an application under this chapter previously submitted to the department for an original construction permit for a facility; or
 - (C) an application under this chapter for modification of an original construction permit issued by the department under this chapter; and
- (2) the department did not issue the permit or modified permit applied for as described in subdivision (1) before April 1, 2008;

the person must submit a new application for an original construction permit for the facility and meet the requirements of all applicable environmental laws existing at the time the new permit is sought.

(c) The fee under IC 13-20-21-3 does not apply to the new application for an original construction permit under subsection (b).

(d) The county executive of a county in which a facility is proposed to be located must adopt an ordinance approving the proposed facility location before the department may issue an original construction permit in response to:

- (1) a new application for an original construction permit for the facility under subsection (b); or
- (2) an application for an original construction permit for the facility submitted to the department after March 31, 2008.

SECTION 18. IC 13-20-2-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) This section applies only:

- (1) in a county that zones under IC 36-7-4; and
- (2) to a facility:
 - (A) for which the zoning required for the construction of the facility was approved before April 1, 1985;
 - (B) for which the department issued a valid construction permit under this chapter before April 1, 2008; and
 - (C) that did not accept waste before April 1, 2008.

(b) The person that holds the permit referred to in subsection (a)(2)(B) may begin or complete construction of the facility referred to in subsection (a)(2) only if after April 1, 2008, the zoning authority that has jurisdiction reviews and approves the:

(1) appropriateness; and

(2) legality;

of the zoning referred to in subsection (a)(2)(A) under the requirements of all applicable zoning laws existing at the time of the review.

SECTION 19. IC 13-20-17.7-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 0.5. (a) The goal of the program established under this chapter is to remove at least eighty percent (80%) of all mercury switches from end of life vehicles processed in Indiana by motor vehicle recyclers.**

(b) Implementing the program established under this chapter addresses the mercury national emission standards for hazardous air pollutants for facilities using recycled steel.

SECTION 20. IC 13-20-17.7-5, AS ADDED BY P.L.170-2006, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 5. (a) Beginning thirty (30) days after the earliest date the commissioner approves a plan under section 4 of this chapter, except as provided in subsection (f), a motor vehicle recycler is required to remove all mercury switches from each end of life vehicle the motor vehicle recycler receives upon receipt of the vehicle.**

(b) ~~After~~ A mercury switch ~~that~~ is removed from a vehicle ~~the mercury switch~~ shall be collected, stored, transported, and ~~otherwise handled~~ **recycled or properly disposed of in accordance with the plan approved under section 4 of this chapter. **Either of the following that is removed from a vehicle shall be collected, stored, transported, and recycled or properly disposed of in the same manner as a mercury switch:****

(1) An ABS sensor.

(2) Any other component containing more than ten (10) milligrams of mercury.

(c) Notwithstanding subsection (a), a motor vehicle recycler may accept an end of life vehicle containing mercury switches that has not been intentionally flattened, crushed, or baled if the motor vehicle recycler assumes responsibility for removing the mercury switches.

(d) A motor vehicle recycler or any other person that removes mercury switches, ABS sensors, or any other components containing more than ten (10) milligrams of mercury in accordance with this section shall maintain records that document the number of:

(1) end of life vehicles the person processed for recycling;

(2) end of life vehicles the person processed that contained mercury switches, ABS sensors, or any other components containing more than ten (10) milligrams of mercury; and

(3) mercury switches, ABS sensors, and any other components containing more than ten (10) milligrams of mercury the person collected.

A person that maintains records under this section shall retain the records for at least three (3) years.

(e) A person may not represent that mercury switches, ABS sensors, or any other components containing more than ten (10) milligrams of mercury have been removed from a motor vehicle being sold or

otherwise conveyed for recycling if the person has not removed the mercury switches, **sensors, or other components** from the vehicle.

(f) ~~A motor vehicle recycler or other person that receives an~~
Subsection (a) does not apply to a mercury switch in an end of life vehicle that is:

(1) intentionally flattened, crushed, or baled; ~~end of life vehicle may not be considered to be in violation of this section if a mercury switch is found in the vehicle after the person acquires the vehicle; or~~

(2) **damaged to the extent that the mercury switch cannot be removed without dismantling the vehicle.**

SECTION 21. IC 13-20-17.7-6, AS ADDED BY P.L.170-2006, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. (a) Subject to subsections (b), (c), and (d), a person is entitled to payment from the department for each ~~mercury switch of the following~~ the person removes from an end of life vehicle under ~~section 5(a)~~ **section 5** of this chapter:

(1) **A mercury switch.**

(2) **An ABS sensor.**

(3) **Any other component containing more than ten (10) milligrams of mercury.**

(b) The commissioner shall establish:

(1) the amount of the payment under subsection (a), which must be:

(A) at least one dollar (\$1); and

(B) not more than five dollars (\$5);

per mercury switch, **ABS sensor, or other component containing more than ten (10) milligrams of mercury;** and

(2) a procedure for claims for payment under this section.

(c) The commissioner shall determine:

(1) whether to use money in the state solid waste management fund; and

(2) if the commissioner determines under subdivision (1) to use money in that fund, the amount of money from the fund to be used;

to make payments under this section.

(d) The department is required to make payments under this section only to the extent of the amount of money determined by the commissioner under subsection (c)(2).

SECTION 22. IC 13-21-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. Except as provided in section 14.5 of this chapter, the powers of a district include the following:

(1) The power to develop and implement a district solid waste management plan under IC 13-21-5.

(2) The power to impose district fees on the final disposal of solid waste within the district under IC 13-21-13.

(3) The power to receive and disburse money, if the primary purpose of activities undertaken under this subdivision is to carry out the provisions of this article.

(4) The power to sue and be sued.

(5) The power to plan, design, construct, finance, manage, own, lease, operate, and maintain facilities for solid waste management.

(6) The power to enter with any person into a contract or an agreement that is necessary or incidental to the management of solid waste. Contracts or agreements that may be entered into under this subdivision include those for the following:

(A) The design, construction, operation, financing, ownership, or maintenance of facilities by the district or any other person.

(B) The managing or disposal of solid waste.

(C) The sale or other disposition of materials or products generated by a facility.

Notwithstanding any other statute, the maximum term of a contract or an agreement described in this subdivision may not exceed forty (40) years.

(7) The power to enter into agreements for the leasing of facilities in accordance with IC 36-1-10 or IC 36-9-30.

(8) The power to purchase, lease, or otherwise acquire real or personal property for the management or disposal of solid waste.

(9) The power to sell or lease any facility or part of a facility to any person.

(10) The power to make and contract for plans, surveys, studies, and investigations necessary for the management or disposal of solid waste.

(11) The power to enter upon property to make surveys, soundings, borings, and examinations.

(12) The power to:

(A) accept gifts, grants, loans of money, other property, or services from any source, public or private; and

(B) comply with the terms of the gift, grant, or loan.

(13) The power to levy a tax within the district to pay costs of operation in connection with solid waste management, subject to the following:

(A) Regular budget and tax levy procedures.

(B) Section 16 of this chapter.

However, except as provided in sections 15 and 15.5 of this chapter, a property tax rate imposed under this article may not exceed eight and thirty-three hundredths cents (\$0.0833) on each one hundred dollars (\$100) of assessed valuation of property in the district.

(14) The power to borrow in anticipation of taxes.

(15) The power to hire the personnel necessary for the management or disposal of solid waste in accordance with an approved budget and to contract for professional services.

(16) The power to otherwise do all things necessary for the:

(A) reduction, management, and disposal of solid waste; and

(B) recovery of waste products from the solid waste stream;

if the primary purpose of activities undertaken under this subdivision is to carry out the provisions of this article.

(17) The power to adopt resolutions that have the force of law.

However, a resolution is not effective in a municipality unless the

1 municipality adopts the language of the resolution by ordinance
2 or resolution.

3 (18) The power to do the following:

4 (A) Implement a household hazardous waste and conditionally
5 exempt small quantity generator (as described in 40 CFR
6 261.5(a)) collection and disposal project.

7 (B) Apply for a household hazardous waste collection and
8 disposal project grant under IC 13-20-20 and carry out all
9 commitments contained in a grant application.

10 (C) Establish and maintain a program of self-insurance for a
11 household hazardous waste and conditionally exempt small
12 quantity generator (as described in 40 CFR 261.5(a))
13 collection and disposal project, so that at the end of the
14 district's fiscal year the unused and unencumbered balance of
15 appropriated money reverts to the district's general fund only
16 if the district's board specifically provides by resolution to
17 discontinue the self-insurance fund.

18 (D) Apply for a household hazardous waste project grant as
19 described in IC 13-20-22-2 and carry out all commitments
20 contained in a grant application.

21 (19) The power to enter into an interlocal cooperation agreement
22 under IC 36-1-7 to obtain:

23 (A) fiscal;

24 (B) administrative;

25 (C) managerial; or

26 (D) operational;

27 services from a county or municipality.

28 (20) The power to compensate advisory committee members for
29 attending meetings at a rate determined by the board.

30 (21) The power to reimburse board and advisory committee
31 members for travel and related expenses at a rate determined by
32 the board.

33 (22) ~~In a joint district,~~ The power to pay a fee from district money
34 to:

35 **(A) in a joint district, the county or counties in the district in**
36 **which a final disposal facility is located; or**

37 **(B) a county that:**

38 **(i) was part of a joint district;**

39 **(ii) has withdrawn from the joint district as of January**
40 **1, 2008; and**

41 **(iii) has established its own district in which a final**
42 **disposal facility is located.**

43 (23) The power to make grants or loans of:

44 (A) money;

45 (B) property; or

46 (C) services;

47 to public or private recycling programs, composting programs, or
48 any other programs that reuse any component of the waste stream
49 as a material component of another product, if the primary
50 purpose of activities undertaken under this subdivision is to carry
51 out the provisions of this article.

(24) The power to establish by resolution a nonreverting capital fund. A district's board may appropriate money in the fund for:

- (A) equipping;
- (B) expanding;
- (C) modifying; or
- (D) remodeling;

an existing facility. Expenditures from a capital fund established under this subdivision must further the goals and objectives contained in a district's solid waste management plan. Not more than five percent (5%) of the district's total annual budget for the year may be transferred to the capital fund that year. The balance in the capital fund may not exceed twenty-five percent (25%) of the district's total annual budget. If a district's board determines by resolution that a part of a capital fund will not be needed to further the goals and objectives contained in the district's solid waste management plan, that part of the capital fund may be transferred to the district's general fund, to be used to offset tipping fees, property tax revenues, or both tipping fees and property tax revenues.

(25) The power to conduct promotional or educational programs that include giving awards and incentives that further the district's solid waste management plan.

(26) The power to conduct educational programs under IC 13-20-17.5 to provide information to the public concerning:

- (A) the reuse and recycling of mercury in:
 - (i) mercury commodities; and
 - (ii) mercury-added products; and
- (B) collection programs available to the public for:
 - (i) mercury commodities; and
 - (ii) mercury-added products.

(27) The power to implement mercury collection programs under IC 13-20-17.5 for the public and small businesses.

SECTION 23. IC 13-23-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. **(a) Subject to subsection (b),** the underground petroleum storage tank excess liability trust fund is established for the following purposes:

- (1) Assisting owners and operators of underground petroleum storage tanks to establish evidence of financial responsibility as required under IC 13-23-4.
- (2) Providing a source of money to satisfy liabilities incurred by owners and operators of underground petroleum storage tanks under IC 13-23-13-8 for corrective action.
- (3) Providing a source of money for the indemnification of third parties under IC 13-23-9-3.
- (4) Providing a source of money to pay for the expenses of the department incurred in paying and administering claims against the trust fund. Money may be provided under this subdivision only for those job activities and expenses that consist exclusively of administering the excess liability trust fund.
- (5) Providing a source of money to pay for the expenses of the department incurred in inspecting underground storage**

tanks.

(b) The combined amount of payments described in subsection (a)(4) and (a)(5) from the underground petroleum storage tank excess liability trust fund in a state fiscal year may not exceed ten percent (10%) of the fund income in the immediately preceding state fiscal year.

SECTION 24. IC 13-30-8-1, AS AMENDED BY P.L.137-2007, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. A vehicle that is used to transport hazardous waste in the commission of an offense described in ~~IC 13-30-10-4~~ **IC 13-30-10-1.5** is subject to forfeiture under IC 34-24-1.

SECTION 25. IC 13-30-10-1, AS ADDED BY P.L.137-2007, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) ~~A person who knowingly or intentionally makes a material misstatement in connection with an application for a permit submitted to the department commits a Class D felony.~~

~~(b)~~ (a) A person who knowingly or intentionally destroys, alters, conceals, or falsely certifies a record that:

(1) is required to be maintained under the terms of a permit issued by the department; and

(2) may be used to determine the status of compliance;

~~commits a Class D felony.~~ **Class B misdemeanor.**

~~(c)~~ (b) A person who knowingly or intentionally renders inaccurate or inoperative a recording device or a monitoring device required to be maintained by a permit issued by the department commits a ~~Class D felony.~~ **Class B misdemeanor.**

~~(d)~~ (c) A person who knowingly or intentionally falsifies testing or monitoring data required by a permit issued by the department commits a ~~Class D felony.~~ **Class B misdemeanor.**

(d) The penalties under this section apply regardless of whether a person uses electronic submissions or paper documents to accomplish the actions described in this section.

SECTION 26. IC 13-30-10-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.5. (a) Except as provided in subsection (b), a person regulated under IC 13-22 who knowingly does any of the following commits a Class B misdemeanor:

(1) Transports hazardous waste to an unpermitted facility.

(2) Treats, stores, or disposes of hazardous waste without a permit issued by the department.

(3) Transports, treats, stores, disposes, recycles, or causes to be transported used oil regulated under 329 IAC 13 in violation of the standards established by the department for the management of used oil.

(4) Makes a false material statement or representation in any label, manifest, record, report, or other document filed or maintained under the hazardous waste or used oil standards.

(b) An offense under subsection (a) is a Class D felony if the offense results in damage to the environment that renders the

environment unfit for human or vertebrate animal life. An offense under subsection (a) is a Class C felony if the offense results in the death of another person.

(c) Before imposing sentence upon conviction of an offense under subsection (a) or (b), the court shall consider either or both of the following factors, if found by the jury or if stipulated to by the parties in a plea agreement:

(1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:

(A) A substantial risk of serious bodily injury.

(B) Serious bodily injury to an individual.

(C) The death of a vertebrate animal.

(D) Damage to the environment that:

(i) renders the environment unfit for human or vertebrate animal life; or

(ii) causes damage to an endangered, an at risk, or a threatened species.

(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).

(d) Notwithstanding the maximum fine under IC 35-50-3-3, the court shall order a person convicted under subsection (a) to pay a fine of at least five thousand dollars (\$5,000) per day for each violation and not more than twenty-five thousand dollars (\$25,000) per day for each violation.

(e) Notwithstanding the maximum fine under IC 35-50-2-6(a) or IC 35-50-2-7(a), the court shall order a person convicted under subsection (b) to pay:

(1) a fine of at least five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000) for each day of violation; or

(2) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of at least five thousand dollars (\$5,000) and not more than one hundred thousand dollars (\$100,000) for each day of violation.

(f) Except as provided in subsection (g), a person regulated under IC 13-17 who does any of the following commits a Class C misdemeanor:

(1) Knowingly violates any applicable requirements of IC 13-17-4, IC 13-17-5, IC 13-17-6, IC 13-17-7, IC 13-17-8, IC 13-17-9, IC 13-17-10, IC 13-17-13, or IC 13-17-14.

(2) Knowingly violates any air pollution registration, construction, or operating permit condition issued by the department.

(3) Knowingly violates any fee or filing requirement in IC 13-17.

(4) Knowingly makes any false material statement, representation, or certification in any form, notice, or report

required by an air pollution registration, construction, or operating permit issued by the department.

(g) An offense under subsection (f) is a Class D felony if the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life. An offense under subsection (f) is a Class C felony if the offense results in the death of another person.

(h) Before imposing sentence upon conviction of an offense under subsection (f) or (g), the court shall consider either or both of the following factors, if found by the jury or if stipulated to by the parties in a plea agreement:

(1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:

(A) A substantial risk of serious bodily injury.

(B) Serious bodily injury to an individual.

(C) The death of a vertebrate animal.

(D) Damage to the environment that:

(i) renders the environment unfit for human or vertebrate animal life; or

(ii) causes damage to an endangered, an at risk, or a threatened species.

(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).

(i) Notwithstanding the maximum fine under IC 35-50-3-4, the court shall order a person convicted under subsection (f) to pay a fine of at least five thousand dollars (\$5,000) per day for each violation and not more than twenty-five thousand dollars (\$25,000) per day for each violation.

(j) Notwithstanding the maximum fine under IC 35-50-2-6(a) or IC 35-50-2-7(a), the court shall order a person convicted under subsection (g) to pay:

(1) a fine of at least five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000) for each day of violation; or

(2) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of at least five thousand dollars (\$5,000) and not more than one hundred thousand dollars (\$100,000) for each day of violation.

(k) Except as provided in subsection (l), a person regulated under IC 13-18 who does any of the following commits a Class C misdemeanor:

(1) Willfully or recklessly violates any applicable standards or limitations of IC 13-18-3-2.4, IC 13-18-4-5, IC 13-18-8, IC 13-18-9, IC 13-18-10, IC 13-18-12, IC 13-18-14, IC 13-18-15, or IC 13-18-16.

(2) Willfully or recklessly violates any National Pollutant Discharge Elimination System permit condition issued by the

department under IC 13-18-19.

(3) Willfully or recklessly violates any National Pollutant Discharge Elimination System Permit filing requirement.

(4) Knowingly makes any false material statement, representation, or certification in any National Pollutant Discharge Elimination System Permit form or in any notice or report required by a National Pollutant Discharge Elimination System permit issued by the department.

(l) An offense under subsection (k) is a Class D felony if the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life. An offense under subsection (k) is a Class C felony if the offense results in the death of another person.

(m) Before imposing sentence upon conviction of an offense under subsection (k) or (l), the court shall consider any or a combination of the following factors, if found by the jury or if stipulated to by the parties in a plea agreement:

(1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:

(A) A substantial risk of serious bodily injury.

(B) Serious bodily injury to an individual.

(C) The death of a vertebrate animal.

(D) Damage to the environment that:

(i) renders the environment unfit for human or vertebrate animal life; or

(ii) causes damage to an endangered, an at risk, or a threatened species.

(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).

(3) Whether the discharge was the result of a combined sewer overflow and the person regulated had given notice of that fact to the department.

(n) Notwithstanding the maximum fine under IC 35-50-3-4, the court shall order a person convicted under subsection (k)(1), (k)(2), or (k)(3) to pay a fine of at least five thousand dollars (\$5,000) a day for each violation and not more than twenty-five thousand dollars (\$25,000) a day for each violation.

(o) Notwithstanding the maximum fine under IC 35-50-3-4, the court shall order a person convicted under subsection (k)(4) to pay a fine of at least five thousand dollars (\$5,000) for each instance of violation and not more than ten thousand dollars (\$10,000) for each instance of violation.

(p) Notwithstanding the maximum fine under IC 35-50-2-6(a) or IC 35-50-2-7(a), the court shall order a person convicted under subsection (l) to pay:

(1) a fine of at least five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000) for each day of violation; or

(2) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of at least five thousand dollars (\$5,000) and not more than one hundred thousand dollars (\$100,000) for each day of violation.

(q) The penalties under this section apply regardless of whether a person uses electronic submissions or paper documents to accomplish the actions described in this section.

SECTION 27. IC 34-24-1-1, AS AMENDED BY P.L.137-2007, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

- (i) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
- (ii) Dealing in methamphetamine (IC 35-48-4-1.1).
- (iii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (iv) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (v) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (vi) Dealing in a counterfeit substance (IC 35-48-4-5).
- (vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
- (viii) Possession of methamphetamine (IC 35-48-4-6.1).
- (ix) Dealing in paraphernalia (IC 35-48-4-8.5).
- (x) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of ~~IC 13-30-10-4~~. **IC 13-30-10-1.5.**

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

(A) furnished or intended to be furnished by any person in

- 1 exchange for an act that is in violation of a criminal statute;
- 2 (B) used to facilitate any violation of a criminal statute; or
- 3 (C) traceable as proceeds of the violation of a criminal statute.
- 4 (3) Any portion of real or personal property purchased with
- 5 money that is traceable as a proceed of a violation of a criminal
- 6 statute.
- 7 (4) A vehicle that is used by a person to:
- 8 (A) commit, attempt to commit, or conspire to commit;
- 9 (B) facilitate the commission of; or
- 10 (C) escape from the commission of;
- 11 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
- 12 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
- 13 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense
- 14 under IC 35-47 as part of or in furtherance of an act of terrorism.
- 15 (5) Real property owned by a person who uses it to commit any of
- 16 the following as a Class A felony, a Class B felony, or a Class C
- 17 felony:
- 18 (A) Dealing in or manufacturing cocaine or a narcotic drug (IC
- 19 35-48-4-1).
- 20 (B) Dealing in methamphetamine (IC 35-48-4-1.1).
- 21 (C) Dealing in a schedule I, II, or III controlled substance (IC
- 22 35-48-4-2).
- 23 (D) Dealing in a schedule IV controlled substance (IC
- 24 35-48-4-3).
- 25 (E) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
- 26 (6) Equipment and recordings used by a person to commit fraud
- 27 under IC 35-43-5-4(10).
- 28 (7) Recordings sold, rented, transported, or possessed by a person
- 29 in violation of IC 24-4-10.
- 30 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as
- 31 defined by IC 35-45-6-1) that is the object of a corrupt business
- 32 influence violation (IC 35-45-6-2).
- 33 (9) Unlawful telecommunications devices (as defined in
- 34 IC 35-45-13-6) and plans, instructions, or publications used to
- 35 commit an offense under IC 35-45-13.
- 36 (10) Any equipment used or intended for use in preparing,
- 37 photographing, recording, videotaping, digitizing, printing,
- 38 copying, or disseminating matter in violation of IC 35-42-4-4.
- 39 (11) Destructive devices used, possessed, transported, or sold in
- 40 violation of IC 35-47.5.
- 41 (12) Tobacco products that are sold in violation of IC 24-3-5,
- 42 tobacco products that a person attempts to sell in violation of
- 43 IC 24-3-5, and other personal property owned and used by a
- 44 person to facilitate a violation of IC 24-3-5.
- 45 (13) Property used by a person to commit counterfeiting or
- 46 forgery in violation of IC 35-43-5-2.
- 47 (14) After December 31, 2005, if a person is convicted of an
- 48 offense specified in IC 25-26-14-26(b) or IC 35-43-10, the
- 49 following real or personal property:
- 50 (A) Property used or intended to be used to commit, facilitate,
- 51 or promote the commission of the offense.

- 1 (B) Property constituting, derived from, or traceable to the
 2 gross proceeds that the person obtained directly or indirectly
 3 as a result of the offense.
- 4 (15) Except as provided in subsection (e), a motor vehicle used by
 5 a person who operates the motor vehicle:
- 6 (A) while intoxicated, in violation of IC 9-30-5-1 through
 7 IC 9-30-5-5, if in the previous five (5) years the person has two
 8 (2) or more prior unrelated convictions:
- 9 (i) for operating a motor vehicle while intoxicated in
 10 violation of IC 9-30-5-1 through IC 9-30-5-5; or
 11 (ii) for an offense that is substantially similar to IC 9-30-5-1
 12 through IC 9-30-5-5 in another jurisdiction; or
- 13 (B) on a highway while the person's driver's license is
 14 suspended in violation of IC 9-24-19-2 through IC 9-24-19-4,
 15 if in the previous five (5) years the person has two (2) or more
 16 prior unrelated convictions:
- 17 (i) for operating a motor vehicle while intoxicated in
 18 violation of IC 9-30-5-1 through IC 9-30-5-5; or
 19 (ii) for an offense that is substantially similar to IC 9-30-5-1
 20 through IC 9-30-5-5 in another jurisdiction.
- 21 If a court orders the seizure of a motor vehicle under this
 22 subdivision, the court shall transmit an order to the bureau of
 23 motor vehicles recommending that the bureau not permit a motor
 24 vehicle to be registered in the name of the person whose motor
 25 vehicle was seized until the person possesses a current driving
 26 license (as defined in IC 9-13-2-41).
- 27 (b) A vehicle used by any person as a common or contract carrier in
 28 the transaction of business as a common or contract carrier is not
 29 subject to seizure under this section, unless it can be proven by a
 30 preponderance of the evidence that the owner of the vehicle knowingly
 31 permitted the vehicle to be used to engage in conduct that subjects it to
 32 seizure under subsection (a).
- 33 (c) Equipment under subsection (a)(10) may not be seized unless it
 34 can be proven by a preponderance of the evidence that the owner of the
 35 equipment knowingly permitted the equipment to be used to engage in
 36 conduct that subjects it to seizure under subsection (a)(10).
- 37 (d) Money, negotiable instruments, securities, weapons,
 38 communications devices, or any property commonly used as
 39 consideration for a violation of IC 35-48-4 found near or on a person
 40 who is committing, attempting to commit, or conspiring to commit any
 41 of the following offenses shall be admitted into evidence in an action
 42 under this chapter as prima facie evidence that the money, negotiable
 43 instrument, security, or other thing of value is property that has been
 44 used or was to have been used to facilitate the violation of a criminal
 45 statute or is the proceeds of the violation of a criminal statute:
- 46 (1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a
 47 narcotic drug).
 48 (2) IC 35-48-4-1.1 (dealing in methamphetamine).
 49 (3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
 50 substance).
 51 (4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(5) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a Class A felony, Class B felony, or Class C felony.

(7) IC 35-48-4-6.1 (possession of methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(8) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

(e) A motor vehicle operated by a person who is not:

(1) an owner of the motor vehicle; or

(2) the spouse of the person who owns the motor vehicle;

is not subject to seizure under subsection (a)(15) unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a)(15)

SECTION 28. IC 36-9-23-5, AS AMENDED BY P.L.1-2007, SECTION 247, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. As used in sections 6 through ~~36~~ 37 of this chapter, "board" means:

(1) the municipal works board; or

(2) if the municipality has transferred the powers and duties of the works board under section 3 of this chapter, the:

(A) sanitary board; or

(B) utility service board;

to which those powers have been transferred.

SECTION 29. IC 36-9-23-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 25. (a) **Subject to section 37 of this chapter**, the municipal legislative body shall, by ordinance, establish just and equitable fees for the services rendered by the sewage works, and provide the dates on which the fees are due.

(b) Just and equitable fees are the fees required to maintain the sewage works in the sound physical and financial condition necessary to render adequate and efficient service. The fees must be sufficient to:

(1) pay all expenses incidental to the operation of the works, including legal expenses, maintenance costs, operating charges, repairs, lease rentals, and interest charges on bonds or other obligations;

(2) provide the sinking fund required by section 21 of this chapter;

(3) provide adequate money to be used as working capital; and

(4) provide adequate money for improving and replacing the works.

Fees established after notice and hearing under this chapter are presumed to be just and equitable.

(c) The fees are payable by the owner of each lot, parcel of real property, or building that:

(1) is connected with the sewage works by or through any part of the municipal sewer system; or

(2) uses or is served by the works.

Unless the municipal legislative body finds otherwise, the works are considered to benefit every lot, parcel of real property, or building

connected or to be connected with the municipal sewer system as a result of construction work under the contract, and the fees shall be billed and collected accordingly.

(d) The municipal legislative body may use one (1) or more of the following factors to establish the fees:

- (1) A flat charge for each sewer connection.
- (2) The amount of water used on the property.
- (3) The number and size of water outlets on the property.
- (4) The amount, strength, or character of sewage discharged into the sewers.
- (5) The size of sewer connections.
- (6) Whether the property has been or will be required to pay separately for any part of the sewage works.
- (7) Whether the property, although vacant or unimproved, is benefited by a local or lateral sewer because of the availability of that sewer. However, the owner must have been notified, by recorded covenants and restrictions or deed restrictions in the chain of title of his property, that a fee or assessment for sewer availability may be charged, and the fee may reflect only the capital cost of the sewer and not the cost of operation and maintenance of the sewage works.
- (8) The cost of collecting, treating, and disposing of garbage in a sanitary manner, including equipment and wages.
- (9) The amount of money sufficient to compensate the municipality for the property taxes that would be paid on the sewage works if the sewage works were privately owned.
- (10) Any other factors the legislative body considers necessary.

Fees collected under subdivision (8) may be spent for that purpose only after compliance with all provisions of the ordinance authorizing the issuance of the revenue bonds for the sewage works. The board may transfer fees collected in lieu of taxes under subdivision (9) to the general fund of the municipality.

(e) The municipal legislative body may exercise reasonable discretion in adopting different schedules of fees, or making classifications in schedules of fees, based on variations in:

- (1) the costs, including capital expenditures, of furnishing services to various classes of users or to various locations; or
- (2) the number of users in various locations.

SECTION 30. IC 36-9-23-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 26. (a) After the introduction of the ordinance establishing fees under section 25 of this chapter, but before it is finally adopted, the municipal legislative body shall hold a public hearing at which users of the sewage works, owners of property served or to be served by the works, and other interested persons may be heard concerning the proposed fees. Notice of the hearing, setting forth the proposed schedule of fees, shall be:

- (1) published in accordance with IC 5-3-1;
- (2) mailed to owners of vacant or unimproved property if the ordinance includes a fee for sewer availability to vacant or unimproved property; and
- (3) mailed to users of the sewage works located outside the

municipality's corporate boundaries.

The notice may be mailed in any form so long as the notice of the hearing is conspicuous. The hearing may be adjourned from time to time.

(b) After the hearing, the municipal legislative body shall adopt the ordinance establishing the fees, either as originally introduced or as modified. A copy of the schedule of fees adopted shall be kept on file and available for public inspection in the offices of the board and the municipal clerk.

(c) **Subject to section 37 of this chapter**, the fees established for any class of users or property shall be extended to cover any additional property that is subsequently served and falls within the same class, without any hearing or notice.

(d) The municipal legislative body may change or readjust the fees in the same manner by which they were established.

(e) Fees collected under this chapter are considered revenues of the sewage works.

SECTION 31. IC 36-9-23-36 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 36. **(a) Except as provided in subsections (b) and (c)**, a municipality may exercise powers granted by this chapter in areas within ten (10) miles outside its corporate boundaries. ~~However, this~~

(b) The mileage limitation in subsection (a) does not apply to the provision of sewage treatment service for an entity that is described in section 16(b)(2) of this chapter.

(c) In an area referred to in subsection (a), a municipality may not:

(1) impose fees under this chapter; or

(2) otherwise exercise powers granted by this chapter;

to provide storm water management services to the area if the county provides storm water management services to the area under IC 8-1.5-5.

SECTION 32. IC 36-9-23-37 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 37. **(a) As used in this section:**

(1) "service" means:

(A) imposing fees; and

(B) otherwise exercising powers;

to provide storm water management services; and

(2) "storm water board" refers to a board defined in IC 8-1.5-5-2.

(b) This section applies only if actions of:

(1) a board under section 36 of this chapter; and

(2) a storm water board under IC 8-1.5-5;

are pending at the same time to service the same area outside a municipality's corporate boundaries.

(c) The board and the storm water board must negotiate the adoption by the board and the storm water board of a memorandum of understanding that permits only the board or only the storm water board to service the area referred to in subsection (b). Neither the board nor the storm water board may

1 service the area before a memorandum of understanding is
 2 adopted under this subsection. The entity designated to service the
 3 area in the memorandum of understanding may finalize the
 4 entity's action referred to in subsection (b). The entity not
 5 designated to service the area in the memorandum of
 6 understanding must terminate the entity's action referred to in
 7 subsection (b).

8 SECTION 33. THE FOLLOWING ARE REPEALED [EFFECTIVE
 9 JULY 1, 2008]: IC 13-30-10-2; IC 13-30-10-3; IC 13-30-10-4.

10 SECTION 34. [EFFECTIVE UPON PASSAGE] (a) As used in this
 11 SECTION, "task force" refers to the environmental crimes task
 12 force established by this SECTION.

13 (b) There is established the environmental crimes task force.

14 (c) The task force consists of the members of the environmental
 15 crimes task force created by P.L.1-2006, SECTION 590, who
 16 served on December 31, 2007.

17 (d) The appointed members of the task force serve at the
 18 pleasure of the appointing authority under P.L.1-2006, SECTION
 19 590. The appointing authority under P.L.1-2006, SECTION 590,
 20 shall fill any vacancy on the task force within forty-five (45) days.

21 (e) The chairman of the legislative council shall designate a
 22 legislative member of the task force to serve as chairperson of the
 23 task force.

24 (f) The expenses of the task force shall be paid from
 25 appropriations made to the legislative council or the legislative
 26 services agency.

27 (g) The task force shall do the following:

28 (1) Conduct at least one (1) public hearing to receive
 29 comments from the public on the need for further
 30 amendments to IC 13-30-10.

31 (2) If the task force determines that further amendments to
 32 IC 13-30-10 are appropriate, prepare recommendations for
 33 amendments to IC 13-30-10 that are consistent with the
 34 minimum requirements for the department of environmental
 35 management delegated state programs.

36 (3) Submit its final report before November 1, 2008, to:

37 (A) the governor;

38 (B) the executive director of the legislative services agency
 39 in an electronic format under IC 5-14-6; and

40 (C) the environmental quality service council.

41 (h) The legislative services agency shall provide staff support to
 42 the task force.

43 (i) The task force shall operate under the policies governing
 44 study committees adopted by the legislative council.

45 (j) A quorum of the task force must be present to conduct
 46 business. A quorum consists of a majority of the members of the
 47 task force. The task force may not take an official action unless the
 48 official action has been approved by at least a majority of the
 49 members of the task force.

50 (k) This SECTION expires January 1, 2009.

51 SECTION 35. [EFFECTIVE UPON PASSAGE] IC 13-30-10-1, as

1 **amended by this act, and IC 13-30-10-1.5, as added by this act,**
2 **apply only to crimes committed on or after the effective date of this**
3 **SECTION.**

4 SECTION 36. **An emergency is declared for this act.**
 (Reference is to ESB 43 as reprinted February 27, 2008.)

Conference Committee Report
on
Engrossed Senate Bill 43

Signed by:

Senator Gard
Chairperson

Representative Dvorak

Senator Hume

Representative Wolkins

Senate Conferees

House Conferees